

ID: CCA\_2012121308293246

Number: **201313027**

Release Date: 3/29/2013

Office:

UILC: 402.00-00, 1311.00-00

---

**From:**

**Sent:** Thursday, December 13, 2012 8:29:34 AM

**To:**

**Cc:**

**Subject:** RE: CCA

This email follows up on the email below. We have reviewed the written protest filed by the taxpayer's representative and stand by our original position that the taxpayer is not entitled to exclude \$X from her income in .

Furthermore, §§ 1311 through 1314 include provisions on the mitigation of the effect of the statute of limitations period (the "mitigation provisions"). In the event that the Service were required to permit the taxpayer to exclude \$X from her gross income in and grant her request for a refund, the mitigation provisions may permit reopening the tax year. Taken together with the relevant provisions of §§ 1311 and 1313, § 1312(3)(A) permits a readjustment of a taxable year, despite the limitations bar, if four conditions are met: (1) a 'determination' excluded an item from the taxpayers' gross income in one year ( ); (2) this 'determination' adopted a position maintained by the taxpayers which is inconsistent with the exclusion of that same item of income in another year ( ); (3) the taxpayers excluded the item from gross income in that other year ( ); and (4) the taxpayers paid tax on the item for the year in which the 'determination' held it excludable ( ). See Treas. Reg. sec. 1.1312-3(a)(2), Ex. 1(ii); Chertkof v. Commissioner, 649 F.2d 264 (4th Cir. 1981); Birchenough v. United States, 187 Ct. Cl. 702 (1969).

The exclusion of the rollover income in is inconsistent with the exclusion of the income in . Therefore, it would appear that there is a basis for asserting mitigation in this case if the claim for refund is accepted.

This document may not be used or cited as precedent. Section 6110(k)(3) of the Internal Revenue Code.